IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-09-2006

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 40509 of 2002

S.Duraikannu .. Petitioner

Versus

1. The Managing Director
   M/s. P.L. Haulwal Trailers Limited
   Industrial Estate, Mettupalayam
   Pondicherry

2. The Presiding Officer
   Pondicherry Labour Court
   Pondicherry .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V.Ajayakumar

For Respondents : Mr.Sanjay Mohan
for M/s. Ramasubramaniam Associates
for R1

ORDER

The prayer in this Writ Petition is for a Writ of Certiorarified Mandamus calling for the records of the second respondent in respect of the award passed in I.D. No. 27 of 1999 dated 30.04.2002 and to quash the same and consequently to direct the first respondent to reinstate the petitioner in service with all other consequential benefits including back wages, service benefit, etc., with retrospective effect from 19.12.1997, the date on which the petitioner was terminated from service.

2. The petitioner was employed as fitter-semi skilled worker in the first respondent and on 26.07.1995, the management has issued a charge memo alleging some misconduct against him and pending disciplinary enquiry, he was placed under suspension. The Management appointed an enquiry officer, who, after completion of enquiry submitted his report to the Management stating that the charges against the petitioner were proved. On receipt of the enquiry report, the Management has sent a second show cause notice dated 28.10.1997, enclosing the enquiry report, for which the petitioner has submitted his explanation on 08.11.1997. Having not satisfied with the explanation offered by the petitioner, the disciplinary authority imposed the punishment of dismissal from service on 19.12.1997. Challenging the same, the petitioner has preferred I.D. No. 27 of 1999 before the second respondent/labour court, which was dismissed on 30.04.2002, hence, the present writ petition has been filed.

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3. Mr. Ajay Kumar, learned counsel appearing for the petitioner submitted as follows:-

The Management has issued the charge memo dated 26.07.1995 on the ground that the petitioner and one Sampath Kumar quarreled with each other and in that incident the petitioner has allegedly attacked the said Sampath Kumar and broken the glass pane of the Production Manager's cabin. Along with the charge memo, the list of witnesses or documents relied on were not enclosed, besides the charges are vague. In the said charge memo, instead of narrating the alleged commission and omission, the management has referred to the number and provisions of standing order. In the absence of statement of allegations in the charge memo on which charges are based or the circumstances which is proposed to be taken into consideration, the petitioner could not effectively submit his explanation or to meet the vague charges. The Presenting Officer of the respondent/ Management was strangely examined as one of the witnesses on the side of the management, which was also relied on by the enquiry officer to arrive at a conclusion that the charges against the petitioner are proved. The alleged injured person Sampath Kumar was not examined as a witness, besides no disciplinary enquiry was initiated against him. The witnesses were examined to the surprise of the petitioner. The enquiry is not in confirmity with the principles of natural justice. The disciplinary authority, who is required to state reasons and pass self-contained speaking order failed to refer the evidence of the witnesses and passed a non-speaking order. The labour court failed to note the above infirmities and erroneously confirmed the order of dismissal. In any event, the punishment imposed on the petitioner is not proportionate to the charges and prayed for allowing of the writ petition.

4. In support of the above contentions, the learned counsel appearing for the petitioner relied on the below mentioned decisions:-

i) (State of U.P. vs. Raj Pal Singh) (2002) 3 Administrative Total Judgments 177 wherein it is held thus:-

> "....But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution. Though the High Court by the impugned judgment has directed that the delinquent would be paid 50% of the back wages, but having regard to the nature of charges against the respondent, we are not inclined to allow any back wages from the period of dismissal till the date of reinstatement. We are told that he has been reinstated on 05.11.1997. We make it clear that respondent will not be entitled to any backwages from the date of dismissal till 05.11.1997."

ii) (Bharat Coking Coal Limited and another vs. Surendra Pratap Narayan Singh and others) 2004 (1) LLJ 498 Calcutta, wherein a Division Bench of the Calcutta High Court held thus:-

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"6. So far as the merit of the matter is concerned, as pointed out above the whole conduct of the enquiry appears to us to be absolutely illegal being in serious violation of the principles of natural justice. The law on the conduct of the departmental enquiry has been well settled and it has been observed repeatedly by the Apex Court as well as by the High Courts of the country from time to time that principles of natural justice should be followed consistent with the rules of conducting of enquiry. The peculiar feature of this case is that the presenting officer who had to act independently and produce all the records in support of the charges against the delinquent, himself came as a witness in the enquiry and made submission in writing and presented himself before the enquiry officer, to be cross-examined as the witness by the delinquent. This manner of conducting the enquiry appears to us to be in violation of the basic tenets of the principles of natural justice as the presenting officer cannot substitute himself as a witness, as that would lose the objectivity in the conduct of the enquiry. More so, he had not produced any document by appearing in the witness box and proving those documents which would substantiate the allegations against the petitioner. Secondly, the delinquent officer was supposed to have been served with the list of witnesses as well as the documents along with the charge-sheet so as to give a correct picture that what was the allegation against him and how it was sought to be substituted by oral as well as documentary evidence so as to facilitate him to file his written statement. This was not done. Normally, if any one has to be charged then he/she has to be given a fair trial. In the present case, it is unfortunate that the delinquent has been dismissed from service without giving him a fair, proper and reasonable opportunity to defend himself."

5. Mr. Sanjay Mohan, learned counsel appearing for the first respondent/Management submitted that enquiry was conducted by the enquiry officer after affording sufficient opportunity to the petitioner. The evidence let in by both sides were duly considered by the enquiry officer and came to a right conclusion that the charges against the petitioner were proved, hence, the enquiry is valid in Law. The petitioner is an aggressor, who attacked the co-worker Sampath Kumar, which was clearly established by examination of witnesses by the management. The misconduct of the petitioner was proved and the only punishment proportionate to the same is dismissal from service, which was rightly awarded by the disciplinary authority. Examination of the presenting officer no way vitiate the enquiry. The evidence of other eye witnesses proved the misconduct of the petitioner. The disciplinary authority and the labour court after careful consideration of both oral and documentary evidence has rightly awarded the punishment on the petitioner and prayed for dismissal of the writ petition.

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6. In support of his contention, the learned counsel appearing for the first respondent/Management relied on the below mentioned decisions:-

i) (Muriadih Colliery of Bharat Coking Coal Limited v. Bihar Colliery Kamgar Union Through Workmen) (2005) 3 SCC 331 wherein in Para No.17, it was held thus:-

> 17. From the facts narrated hereinabove, the ratio laid down in two cases referred to hereinabove amply applies to the appeal in hand. The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal. Substituting the order of dismissal in such a case, withholding of one increment in our opinion is wholly disproportionate to the gravity of misconduct and is unsupportable."

ii) (Hombe Gowda Educational Trust and another vs. State of Karnataka and others) (2006) 1 Supreme Court Cases 430 wherein in Para No.29 and 30, it was held thus:-

> 30. This Court has come a long way from its earlier viewpoints. The recent trend in the decision of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the work place/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noted supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal cannot neither ignore the ratio laid down by this Court nor refuse to follow the same."

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iii) (Union of India and others v. Narain Singh) (2002) 5 Supreme Court Cases 11 wherein in Para No.8, it was held thus:-

> "8. In the case of Apparel Export Promotion Council v. A.K. Chopra it has been held by this Court that it is within the jurisdiction of the competent authority to decide what punishment is to be imposed and the question of punishment is outside the purview of the High Court's interference unless it is so disproportionate to the proved misconduct as to shock the conscience of the Court. It has been held that reduction of sentence by the High Court would have a demoralising effect and would be a retrograde step. It has been held that repentance/unqualified apology at the last appellate stage does not call for any sympathy or mercy."

iv) (Bharat Heavy Electricals Limited v. M. Chandrasekhar Reddy) (2005) 2 Supreme Court Cases 481, wherein in Para No.14, it was held thus:-

> 14. With respect, we are unable to agree with these findings of the High Court. In our opinion, there is no such thing as unlimited jurisdiction vested with any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

7. This Court carefully considered the argument of counsel on both sides and perused the records. The first respondent/Management issued the suspension order dated 26.07.1995 to the petitioner which runs as follows:-

> "It has been reported against you as under:
>
> You were on duty on Ist Shift on 26.07.1995. During lunch interval, at about 10.00 A.M. There was a quarrel between you and Mr. D. Sampath Kumar and that both of you assaulted each other. In the process you two have also damaged and broken the glass panes of the Production Manager's Cabin.
>
> This is a grave misconduct as per the Companies Standing Orders under page No.13, Clause 14 and 17. For this you are hereby suspended from duty, pending enquiry, with effect from 27th July 1995."

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8. It is evident from the suspension order that the Petitioner and Sampath Kumar quarreled with each other and in that process, both of them have damaged and broken the glass pane of Production Manager's cabin. Whereas, in the charges, it is found mentioned that the petitioner quarreled with the said Sampath Kumar and created an unwarranted scene which resulted in damage to the companies property namely glass pane of the windows of the Production Manager's cabin.

9. The charge memo dated 28.07.1995 issued to the petitioner is as follows:-

> You have been served with a memo dated 26.07.1995 detailing your commission of acts of mis-conducts of serious nature and suspending you pending enquiry. It is alleged that you, during your duty in the I shift on 26.07.1995 quarreled with another co-employee Mr. D. Sampath Kumar around lunch time at about 10 A.M. inside the shop floor premises and created an unwarranted scene which, among other acts of indiscipline also resulted in damages to company properties. The glass panes of the windows to production Manager's' cabin were broken to pieces.
>
> These acts as stated above amounts to acts of misconduct of serious nature. Accordingly, you stand charged under the relevant sections of our approved standing orders as follows:-
>
> "Charge No.1 : Clause No.XXII – Sub Section 14 – Riotous, disorderly, indecent or improper behaviour, threatening, intimidation, assault or threat of assault either provoked or otherwise, within the establishment.
>
> Charge No.2 : Clause No.XXII – Sub Section 17 – Conduct on the part of any workman within the premises of the factory which endangers the life or safety of any person or machinery
>
> Charge No.3 : Clause NO.XXII – Sub Section 24 – Damage, whether wilful or due to irresponsible action in process or any property of the Establishment or within the Establishment.
>
> Charge No.4 : Clause XXII – Sub Section 34 – Refusal to accept a charge sheet, order or other communications served in accordance with these standing orders/or sent through post.
>
> Charge No.5 : Clause No.XXII – Sub Section 40 – making false, vicious or malicious statements, public or otherwise against the Establishment or any other member employee of the Establishment.

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Charge No.6 : Clause No. XXII – Sub Section 61 – Commission of any act subversive or discipline or good behaviour in the factory."

10. The preamble of the charge memo refers to order of suspension dated 26.07.1995 and alleged misconduct mentioned therein. No specific act of the petitioner was found mentioned. A reading of it indicate both the petitioner and Sampath Kumar committed the act of misconduct. It is to be remembered in the suspension order, it was stated that the petitioner and Sampath Kumar quarreled with each other and damaged glass pane of Production Manager's cabin. If the charges framed against the delinquent officer were vague and it was difficult to meet the vague charges, the termination is bad even though the delinquent did not raise any objection. Followed (Sawai Singh vs. State of Rajasthan) AIR 1986 SC 995 wherein in Para-15, it was held thus:-

"15. Shri. B.D. Sharma, learned advocate for the respondent, contended that no allegations have been made before the enquiry officer or the High Court, that the charges are vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the charges."

11. In and by the charge memo the petitioner was called upon to submit his explanation within 48 hours from the date of receipt of the same. The Tamil version of the said Charge memo was also enclosed along with that. The Petitioner has given his explanation on 31.07.1995 denying the charges as well as pointing out the discrepancies in allegations mentioned in suspension order and charges. Neither list of witnesses or documents sought to be relied upon by the Management were enclosed with charge memo nor served on him before enquiry was commenced.

12. The delinquent officer should be provided with all materials relating to the charge to give him a reasonable opportunity to defend himself, examine and cross-examine the witnesses. The charge memo should be accompanied by statement of allegations on which charges are based. Followed (Khem Chand vs. Union of India) AIR 1958 SC 300 wherein in Para No.19, it was held thus:-

"19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

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(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

In the decision reported in (Surath Chandra Chakravarty vs. The State of West Bengal) AIR 1971 SC 752 wherein in para-4, it was held thus:-

"....The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the trial Judge was fully justified in decreeing the suit."

13. Now, we look into Clause XXIV of the certified standing orders of the management which says that where a workman is charged with an offence which may lead to imposition of penalty, he shall be informed in writing of the allegation made or given a show cause notice to him and shall be given an opportunity to make written representation within 48 hours. In the this context, it is relevant to refer to the decision reported in (State of Madhya Pradesh vs. Chintaman Sadashiva Waishampayan) AIR 1961 Supreme Court 1623 wherein in Para-9, it was held thus:-

9. ....There is no dispute that under Article 311(2) the respondent is entitled to have such a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Article 311(2) had been afforded to the respondent in the present case."

In (Nasiruddin Dikshita vs. Union of India and others) AIR 1986 Supreme Court 2118 in Para Nos. 3, 9 and 13, the Honourable Supreme Court held thus:-

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> "3. ...It is not necessary to advert to these contentions inasmuch as the controversy has now been narrowed down to one central issue viz. whether there has been violation of principles of natural justice by reason of:
>
> (i) failure to supply copies of the statements of witnesses recorded ex parte at the pre-enquiry stage; and
>
> (ii) the failure to supply copies of the documents on which reliance was placed by the Department to establish the charges before the enquiry commenced....."
>
> 9. ....And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him."
>
> "13. ....As discussed earlier the facts and circumstances of this case also impel us to the conclusion that the appellant has been denied reasonable opportunity to defend himself...."

Hence, it is clear that a mere repetition of the provisions of certified standing orders would make it difficult to the petitioner to meet the charges fairly and this Court is of the view that the petitioner has been denied a reasonable opportunity of exonerating himself, which was not considered by the disciplinary authority and labour Court.

14. The Presenting Officer of the management namely Mr. Vijaya Shankar was examined by the management as MW1 on 20.01.1996, 24.02.1996, 16.03.1996, 23.03.1996, 06.04.1996 and cross-examined by the petitioner on 24.08.1996 and 07.09.1996. The enquiry officer has taken into account of the evidence of the Presenting Officer Vijaya Shankar and also Production Supervisor Anbalagan and Rajagopalan, Store Keeper and came to a conclusion that the charges against the petitioner were proved and submitted his report on 30.08.1997 to the Management. On receipt of the report of the enquiry officer, the disciplinary authority forwarded the said report to the petitioner and called for his explanation. Accordingly, the petitioner submitted his explanation on 08.11.1997 alleging that the enquiry was not free or fair, the evidence in his favour were not considered, the enquiry was conducted inside the factory, the subsistence allowance was not paid regularly and he was a leader of the Trade Union, hence, the Management victimised him. On receipt of the same, the disciplinary authority, by non-speaking order dated 19.12.1997 dismissed the petitioner from service. The disciplinary authority, who is required to state reasons and pass self-contained speaking order failed to refer the evidence of the witnesses or documents and chosen to pass non-speaking order.

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15. Before the labour Court, the Petitioner marked Exs. A1 to A52 and the respondent/Management has marked Exs.B1 to B33. The Petitioner herein canvassed before the labour court that the charge memo served on the petitioner itself is biased one and the same was against the certified standing orders of the Management, but no finding was given by it. It is also canvassed that the Presenting Officer was examined as a witness for the Management, which is against the principles of natural justice. Further, it was pointed out that no disciplinary proceeding was initiated against the said Sampath Kumar, who allegedly quarreled with the petitioner. The labour Court, though mentioned that the Presenting Officer could have refrained himself from being examined, wrongly held that he only deposed about the working hours and shift timings of the factory, he was not an eye witness to the occurrence and his evidence is only formal in nature, besides, his evidence no way prejudiced the petitioner. The labour court miserably failed to see that the enquiry officer taken into account of the evidence of the presenting officer in respect of the charges made against the petitioner to base a conclusion that the charges against the petitioner were proved.

16. It is canvassed by the petitioner that the charge memo was issued by the management without enclosing the list of witnesses and the documents to be relied on. The Petitioner has also canvassed this before the labour court stating that the charge memo is not in accordance with law. It is not the case of the Management that the documents to be relied on are confidential or privileged one. However, no explanation is offered for not serving the same. The labour court has not given any finding on that issue. The argument of the counsel for the petitioner is that the respondent/Management could have framed the charges against the petitioner without any basis and to suit the charges witnesses and documents were produced surprisingly I find some force in his argument.

17. The other submission of the petitioner before the labour court was that no action has been initiated against the co-worker Sampath Kumar. The Management replied that the said Sampath Kumar highlighted the fact that it was the petitioner who attacked him, hence, no disciplinary proceeding was initiated against him. The said statement was erroneously accepted by the labour court and erred in coming to the conclusion that there is nothing on record to show what interest the respondent/ Management had in favour of Sampath Kumar. In this context, it is necessary to refer to clause (XXIV) (b) of the certified Standing Orders of the Management wherein it is stated that "when an enquiry relates to alleged misconducts of several workman, the domestic enquiry may be held for all such workman individually." The fact remains that no action has been initiated by the management against Sampath Kumar. In this context, it is relevant to refer to the decision of the Honourable Supreme Court reported in (State of U.P. vs. Raj Pal Singh) (2002) 3 Administrative Total Judgments 177 referred to above wherein it was held that "when the charges are same and identical in relation to one and the same incident, their conduct with the delinquents differently in the award of punishment, would be discriminatory."

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18. The labour court, without proper consideration of the above said facts dismissed the I.D. No. 27 of 1999 of the petitioner, hence, the same is set aside, however, considering the facts and circumstance of the case, the respondent/Management is directed to reinstate the petitioner in service with 25% of the backwages and continuity of service within a period of four weeks from today.

19. The writ petition is ordered in the above terms. No costs.

rsh

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1.The Presiding Officer
Pondicherry Labour Court,Pondicherry.

2.The Managing Director
M/S.P.L.Hauwal Trailors Ltd.,
Industrial Estate
Mettupalayam
Pondicherry.

+ one cc to M/s.S.Ramasubramaniam, Advocates Sr.No.42257.

AKM (CO)
RSM/15.9.2006

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